

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

VANTAGE FINANCIAL SERVICES, INC.

Plaintiff

v.

NONPROFIT SERVICE GROUP, INC. and
GEORGE E. MILLER

Defendants

CIVIL ACTION NO. 04-11686-WGY

**DEFENDANTS' RESPONSE TO PLAINTIFF'S AMENDED OBJECTION TO
DEFENDANTS' PROPOSED TRIAL EXHIBITS**

Defendants Nonprofit Service Group, Inc. and George E. Miller submit this response to address inaccuracies in the Plaintiff's Amended Objection to Defendants trial exhibits. Contrary to plaintiffs' assertions, counsel for plaintiff was informed earlier this week during a telephone conference with defense counsel that defendants were adding additional proposed exhibits and removing others. Plaintiff's amended objections omits reference to this conversation and also omits reference to earlier email correspondence in which the defendants' proposed exhibit list was provided to plaintiffs. The email correspondence highlighted by plaintiffs attached a further version of the list that made minor corrections and one addition to a virtually identical version of the list emailed to plaintiffs a day earlier. Defense counsel was not claiming that it had only added one additional exhibit from the version of its exhibit list contained in the pretrial memorandum. Based on the parties' prior conversation and email, it was abundantly clear that defendants had added additional exhibits and removed and substituted others. It is noteworthy that the numbering and content of defendant's exhibit list had been impacted by the plaintiffs' continued failure to provide copies of the exhibits from day one of the deposition of Jay Fleisher

although they had been requested numerous times by defendants. Defendants previously referred to the Fleisher exhibits collectively as Exhibit 85. Since the individual exhibits were not made available to defendants until after the proposed list was drafted, Defendants took pains to revise their proposed list in an attempt to properly itemize the Fleisher exhibits and locate copies of the relevant documents. The addition of the individual Fleisher exhibits necessarily impacted the numbering and content of the list. Furthermore, plaintiffs do not refer to the fact that earlier this week defendants provided, at their expense and for plaintiff's convenience, copies of every document listed on defendants' proposed exhibit list.

Plaintiff cannot claim surprise or prejudice as a result of defendants' proposed exhibits and any objections on such grounds should be overruled.

Respectfully submitted,
Nonprofit Service Group, Inc. and George E.
Miller,
By their attorneys,

/s/ Matthew J. Griffin

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